

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7069

BILL NUMBER: HB 1010

NOTE PREPARED: Mar 22, 2006

BILL AMENDED: Mar 14, 2006

SUBJECT: Eminent Domain.

FIRST AUTHOR: Rep. Wolkins

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: X **GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Condemnor Requirements- The bill requires a condemnor, before proceeding to acquire property by use of eminent domain, to: (1) establish a proposed purchase price; (2) provide the owner with an appraisal or other evidence used to establish the proposed purchase price; and (3) conduct a good faith negotiation with the owner of the property. The bill requires a condemnor, except the Department of Transportation, certain utilities, and certain other persons, to proceed to acquire the property by use of eminent domain not more than two years after the condemnor submits a written acquisition offer to the owner of the property. This bill requires the Department, certain utilities, and certain other persons to initiate eminent domain proceedings not more than six years after the Department, utility, or other person submits a written acquisition offer to the property owner.

Deadlines- The bill extends time periods that apply to certain eminent domain procedures.

Failure to Take Possession and Adapt Property- The bill provides that if a condemnor fails to: (1) take possession of property the condemnor acquired through the use of eminent domain; and (2) adapt the property for the purpose for which it was acquired; not later than six years after the payment of the award or judgment for damages occurs, the condemnor forfeits all rights in the property as if the procedure to take the property had not begun.

Eminent Domain to Transfer Ownership- The bill establishes procedures for using eminent domain to transfer ownership or control of real property between private persons for uses that are not public uses, including: (1)

limiting the use of eminent domain only to acquire certain types of property; (2) requiring mediation; (3) requiring that the acquisition of the property will accomplish more than only increasing the property tax base of a government entity; (4) requiring mediation under certain circumstances; (5) requiring the payment of a premium to acquire more than the fair market value for certain types of property; (6) requiring the condemnor to pay the attorney's fees of certain owners; and (7) requiring the payment of certain other damages, if applicable, including business losses.

Removal of Lawfully Erected Signs- The bill prohibits a state agency or political subdivision from requiring that a lawfully erected sign be removed or altered as a condition of issuing a permit, license, variance, or other order concerning land use or development unless the sign owner is compensated or has waived compensation in writing.

Payment of Attorney's Fees- The bill provides that a property owner may receive litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of: (1) \$25,000; or (2) the fair market value of the property; if the property owner is awarded greater compensation at trial than was offered in the condemnor's last settlement offer.

Essential Delivery of Services- The bill specifies that certain persons authorized to exercise eminent domain may only do so to accomplish the essential delivery of services.

Libraries Exercising Eminent Domain- The bill prohibits libraries from exercising eminent domain unless a specified legislative body in the library district adopts a resolution specifically approving the use of eminent domain for a particular purpose.

Cemeteries- The bill prohibits a privately owned cemetery from exercising eminent domain.

Other Changes- The bill makes other changes and conforming amendments.

Effective Date: Upon passage.

Explanation of State Expenditures: This bill affects all entities having the power of eminent domain. The fiscal impact of this bill will vary among entities depending on state and local actions.

Failure to Take Possession and Adapt Property- The bill gives an entity six years to take possession of acquired property and adapt it to its intended use, or else it forfeits all rights to the property as if the transaction never occurred. Current law allows an entity five years to take possession of acquired property.

Payment of Attorney's Fees- Under the bill, there would be three scenarios under which a condemnor could be required to pay attorney's fees to a landowner:

(1) In a public eminent domain proceeding, if a trial judgment were to award damages (excluding costs and interest) greater than the amount of the last settlement offer, a condemnor would be required to pay the property owner's litigation expenses (including their reasonable attorney's fees), not to exceed the lesser of \$25,000 or the fair market value of the property.

(2) If the court were to find that a private-to-private acquisition did not meet the requirements proposed by the bill to make the acquisition, the condemnor would be required to pay to the land owner reasonable attorney fees

to defend the action.

(3) In a private-to-private acquisition, if a trial judgment were to award damages (excluding costs and interest) greater than the amount of the last settlement offer, a condemnor would be required to pay the property owner's litigation expenses (including their reasonable attorney's fees) in an amount not exceeding 25% of the cost to acquire the property in question.

Current statute provides for the condemnor to pay a property owner's additional costs, up to \$2,500, if there is a trial and the judgment exceeds the last settlement offer.

The provision could impact state expenditures when involved as a condemnor in an eminent domain proceeding.

This bill could also have a fiscal impact if an entity makes additional expenditures because the type of property that may be acquired using eminent domain is expanded.

All expenditures would still be subject to appropriation limits and authority.

Explanation of State Revenues:

Explanation of Local Expenditures: See *Explanation of State Expenditures*.

Explanation of Local Revenues:

State Agencies Affected: Certain entities having the ability to exercise the power of eminent domain; Legislative Council; Legislative Services Agency.

Local Agencies Affected: Certain entities having the ability to exercise the power of eminent domain.

Information Sources:

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